

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF MILPITAS, AND RBF CONSULTING**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and RBF Consulting ("Consultant") as of April 3, 2007 in Milpitas, California.

**AGREEMENT**

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on July 30, 2007, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the highest and best professional standards observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the highest and best professional standards of quality observed by a person practicing in Consultant's profession.
- 1.3 **Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the highest and best professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to the highest and best standards of accuracy, completeness and coordination.
- 1.4 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit - B shall name any specific personnel (including title and hourly charge rate) who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.5 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1 above and to complete Consultant's obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant an amount not to exceed \$31,890 for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consultant further represents that the amount of the compensation specified in this Section 2 shall be a guaranteed maximum price. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

**2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills; ("Invoice #")
- The beginning and ending dates of the billing period;
- A Task Summary containing the City project name and number, purchase order number, Project Manager, original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- Consultant shall use the City's "Consultant Progress Payment" format specified in Exhibit D for invoice tracking and shall submit the form with each invoice.
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;
- The Consultant's signature.

**2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the

requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

- 2.3 **Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work. Consultant shall not perform extra work without specific written City approval.

- 2.4 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.
- 2.5 **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed One thousand five hundred dollars (\$1,500.00). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.
- 2.6 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.7 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.
- 2.8 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

**Section 3. FACILITIES, AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

**4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

**4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General Requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be

performed under this Agreement, or the general aggregate limit, shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum Scope of Coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

**4.2.3 Additional Requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement at least as broad as Insurance Services Office form number CG 20 10 (11/85 ed.) to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after

thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

- 4.3 **Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.3 The policy must contain a cross liability clause.

4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 **Requirements for All Policies.**

4.4.1 **Acceptability of Insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

4.4.2 **Verification of Coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original

endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

4.4.3 **Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.4 **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.4.5 **Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 **Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.6 **Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

**Section 6. STATUS OF CONSULTANT.**

6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an



agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

## **Section 7.      LEGAL REQUIREMENTS.**

- 7.1      **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2      **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3      **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4      **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.
- 7.5      **Nondiscrimination, and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

## **Section 8.      TERMINATION AND MODIFICATION.**

- 8.1      **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be specified in writing by the City. Consultant understands and agrees that, if City issues such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1 Immediate cancellation of the Agreement;
  - 8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
  - 8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, calculations, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties. All work products submitted to the City pursuant to this Agreement shall be deemed a "work for hire". Upon submission of any work for hire pursuant to this Agreement, and acceptance by the City as complete, non-exclusive title to copyright of said work for hire shall transfer to the City. The compensation recited in Exhibit B shall be deemed to be sufficient consideration for said transfer of copyright.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant

agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.8 **Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Ownership of Documents.** All documents developed or obtained by Consultant in the performance of the Agreement shall be deemed to be the property of the City.
- 10.10 **Contract Administration.** This Agreement shall be administered by **Greg Armendariz**, who is authorized to act for, and on behalf of City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.11 **Notices.** Any written notice to Consultant shall be sent to:  
William J. Conyers, Vice President  
RBF Consulting  
500 Ygnacio Valley Road  
Walnut Creek, CA. 94596
- Any written notice to City shall be sent to:  
Greg Armendariz, Public Works Director/City Engineer  
455 East Calaveras Boulevard  
Milpitas, California 95035
- 10.12 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.13 **Reports.** Consultant shall prepare daily field inspection report, material testing report, compaction report, and other reports as directed by the Engineer. Consultant shall provide such reports to the City on daily basis.
- 10.14 **Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.15 **Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

RBF CONSULTING

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
William J. Conyers, Vice President

ATTEST:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Taxpayer Identification Number

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven T. Mattas, City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Greg Armendariz, Public Works Director

APPROVED:

\_\_\_\_\_  
Emma Karlen, Finance Director/Risk Manager

Attachments:

Exhibit A:	Scope of Services
Exhibit B:	Compensation Schedule, personnel and rates
Exhibit C:	Insurance Coverage Documents
Exhibit D:	Sample Progress Payment form

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## **EXHIBIT A**

### **SCOPE OF WORK**

#### **Abbot Road Storm Drain Improvement Project**

A. RBF agrees to provide the following services:

##### **Task I Final Plans, Specifications and Estimates**

###### **Task 1.01 Field Topographic Mapping**

RBF will conduct a field topographic survey from Redwood Avenue north on Abbott Road to the lagoon. RBF will map all surface features that may affect the design of the storm drain including manhole, manhole inverts, valves and features that may indicate a underground pipeline or conduit crossing, such as fire hydrants, street lights, etc. RBF will determine the water elevation of the lagoon and map a short distance into the lagoon at the proposed outlet structure. Included in this fee is a half-day of field survey time to pick surface elevations and precise locations where potholes were taken.

###### **Task 1.02 Storm Drain Improvement Plans**

RBF will prepare storm drain improvement plans at a scale of 1"=40'. Improvement plans will consist of one plan and profile sheet, and one detail sheet for the outlet structures and wet utility relocation details, if necessary. No separate title sheet will be prepared; location map and general notes will be placed on the detail sheet. Included in this fee is the preparation of base map information, which will invoke the collection of appropriate as-built utility information from the City and the notification to dry utility companies to collect their atlas files. Included, also in this fee are two meetings with the City, one being a field meeting prior to commencing the work and one meeting to review the preliminary layout of the storm drain and profile, concepts for the outlet structure and number of utility conflicts, if any. RBF will provide the initial communication with the utility companies as to any relocation requirements, but anticipate the City will follow through on implementation, if necessary.

###### **Task 1.03 Specification**

RBF will prepare specifications for the project consistent with the requirements of the City of Milpitas. It is assume the City will provide boilerplate information to assemble the complete contract documents. RBF will provide modifications to boilerplate documents as applicable for this project.

**Task 1.04      Quantity and cost Estimate**

RBF will conduct quantify calculations, prepare bid schedule to include in the contract documents and prepare cost estimate for the Cities' use.

**Task 1.05      Potholing**

RBF will use the services of Subtornics Corp. to conduct potholing to determine dry and wet utility crossing that may impact the design of the storm drain profile. The budget included in the fee section is a budget allowance; actual fee will be based upon the potholes required for the project which will be approved by the City prior to commence of work.

**Additional Services:**

Services that are not specifically identified herein as services to be performed by RBF or its consultants are considered "Additional Services" for purposes of this Agreement. Client may request that RBF perform services that are considered Additional Services. However, RBF is not obligated to perform such Additional Services unless an amendment to this Agreement has been fully executed setting forth the scope, schedule and fee for such Additional Services. In the event RBF performs Additional Services before receipt of such executed amendment, Client acknowledges its obligation to pay for such services at RBF's standard rates, within 30 days of receipt of RBF's invoice.

**Optional Services:**

RBF can provide structural calculations, details and drawings for a RCB should it be determined to be the most viable alternative for the drainage discharge of the Redwood Avenue overflow for a separate fee. This proposal is based upon the assumption a circular or arch storm drainpipe will function for this design.

**Exclusions:**

- Geotechnical Investigation & Report
- Hydrology and Hydraulics Report
- Environmental Permits
- Construction Support Services



**Exhibit "B"**  
**Proposed Compensation**

The Client agrees to compensate RBF for such services as follows. Billing will be monthly on a percent complete basis plus the direct cost of reimbursable expenses as indicated below. A management fee of 10% will be added to all sub-consultant and reimbursable expense fees.

<u>TASK</u>	<u>DESCRIPTION</u>	<u>FEE</u>
<b>PHASE I</b>	<b>FINAL DESIGN PLANS, SPECIFICATIONS AND ESTIMATES</b>	
Task 1.01	Field Topographic Mapping	\$3,400.00
Task 1.02	Storm Drain Improvement Plans	\$12,500.00
Task 1.03	Specifications	\$1,200.00
Task 1.04	Quantity and Cost Estimates	\$750.00
Task 1.05	Potholing	\$12,540.00
	<b>Sub-Total Professional Fee</b>	<b>\$30,390.00</b>
	Reimbursable Expense	\$1,500.00
	<b>Grand Total Fee</b>	<b>\$31,890.00</b>



## HOURLY RATE SCHEDULE

Effective January 2007 through December 2007

	\$ / hr.
<b>OFFICE PERSONNEL</b>	
Senior Principal .....	\$240.00
Principal .....	215.00
Project Director.....	200.00
Senior Project Manager.....	190.00
Project Manager.....	176.00
Structural Engineer.....	176.00
Corrosion Engineer .....	153.00
Senior Engineer/Senior Planner.....	150.00
Electrical Engineer .....	142.00
Landscape Architect.....	138.00
Senior GIS Analyst.....	135.00
Project Engineer/Project Planner .....	129.00
Environmental Specialist.....	125.00
Design Engineer/Senior Designer/Mapper .....	122.00
GIS Analyst.....	110.00
Designer/Planner.....	106.00
Graphic Artist.....	89.00
Environmental Analyst/Staff Planner .....	89.00
Design Technician .....	87.00
Assistant Engineer/Planner .....	84.00
Engineering Aid/Planning Aid .....	68.00
<b>FIELD PERSONNEL</b>	
2-Person Survey Crew .....	\$218.00
1-Person Survey Crew .....	160.00
Licensed Surveyor .....	158.00
Field Supervisor .....	153.00
<b>CONSTRUCTION MANAGEMENT PERSONNEL</b>	
Construction Manager .....	\$167.00
Resident Engineer/Project Manager.....	140.00
Senior Construction Inspector .....	110.00
Construction Inspector .....	106.00
Field Office Engineer.....	101.00
Construction Technician.....	87.00
<b>OTHER SERVICES AND FEES</b>	
Project Coordinator .....	\$99.00
Permit Processor.....	75.00
Clerical/Word Processing.....	58.00
Consultation Relative to Legal Actions.....	350.00
Vehicle Mileage .....	0.60/Mile


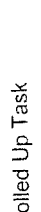

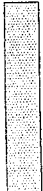






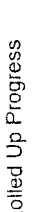


Note:  
 Blueprinting, reproduction, messenger service and other direct expenses will be charged as an additional cost plus 15%. A Sub-consultant Management Fee of fifteen-percent (15%) will be added to the direct cost of all sub-consultant services to provide for the cost of administration, sub-consultant consultation and insurance.

# Abbott Storm Drain Improvement Project Project Design Schedule

Jn 35-100579  
Tue 03/20/07

Prepared for: City of Mipitas  
Prepared by: RBF Consulting

ID	Task Name	Duration	Apr	May	Jun	Jul
1	Cities' Notice to Proceed	0 days	04/01	04/08	04/15	04/22
2	Potholing	20 days	04/10	05/01	05/07	
3	Survey Topographic Base Map	10 days		05/15	05/21	
4	Evaluation of Pothole Data	5 days		05/22	05/28	
5	Preliminary Storm Drain Layout	5 days		05/29	06/11	
6	Cities Approval of SD Layout	10 days		06/12	07/02	
7	Final Engineering	15 days		07/03	07/16	
8	City Plan Check	10 days			07/17	
9	RBF Finalize Drawings	10 days				07/30

Task		Rolled Up Task		External Tasks	
Critical Task		Rolled Up Critical Task		Project Summary	
Progress		Rolled Up Milestone		Group By Summary	
Milestone		Rolled Up Progress			
Summary		Split			

Project: Abbott Avenue SD  
Date: Tue 03/20/07

# Subtronic Corporation

2430 Sprig Court, Ste C

Concord, CA 94520

Phone 925-686 3747

Fax 925-686-5281

## Estimate

Estimate # 7075

Date of Estimate 3/16/2007

**ESTIMATE FOR:**

P.O. #:

RBF Consulting

500 Ygnacio Valley Road, Ste. 270

Walnut Creek, CA 94596

925-906-1460 fax: 925-906-1465

William Conyers

SURVEYOR	JOB DATE	DAY	TIME	Map Page & Cross	TERMS
RB					Net 30
DESCRIPTION	QTY	COST	TOTAL		

PROJECT LOCATION: Redwood Ave and Abbott Ave,  
Milpitas  
Provide electromagnetic utility location of approximately 800lf  
on Abbott Ave and Vacuum Excavation of approximately 16  
proposed potholes, for the City of Milpitas Abbott Ave  
Drainage Improvement Project.  
VACUUM EXCAVATION:

SCOPE OF WORK: We will provide vacuum excavation utility  
location (potholing) at the above location.

METHODOLOGY: The utility will be exposed using vacuum  
excavation. The point of excavation will be marked by others.  
Measurements will be taken to the top of the utility.

Excavated material will be removed from the hole and  
replaced with Class 2AB compacted and the surface cold  
asphalted where applicable.

INCLUSIONS: We will:

a. Provide all special equipment, skilled personnel and  
supplies necessary to perform designation and utility location  
services utilizing air/vacuum, dust controlled soil extraction  
methods.

b. Acquire all necessary permits from the District, City,  
County or other jurisdiction to work in the streets, roads and  
right of ways associated with the above project. The actual  
cost of each permit will be charged directly to client

c. Comply with all applicable subsurface utility damage  
prevention laws, including pre-marking prospective work

**TOTAL****Signature****Date**

Page 1

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Fax 925-686-5281

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**ESTIMATE FOR:**

RBF Consulting

500 Ygnacio Valley Road, Ste. 270

Walnut Creek, CA 94596

925-906-1460 fax: 925-906-1465

William Conyers

P.O. #:

SURVEYOR	JOB DATE	DAY	TIME	Map Page & Cross	TERMS
RB					Net 30
DESCRIPTION	QTY	COST	TOTAL		

areas and notify USA 48 hours prior to commencement of work.

d. Provide traffic control, including materials, labor and equipment, in accordance with the requirements of the appropriate jurisdictions.

e. Neatly cut and remove existing pavement, generally 12" square for depths to 10 feet.

f. Remove the soil above the utility using vacuum excavation and compressed air to loosen the material, in order to safely expose the top of the utility.

g. Measure to 1/10 of one foot to the top of the utility from original ground surface.

h. Backfill the excavation and re-surface with cold asphalt in paved areas.

i. Furnish and install PK nails and/or high visibility "whiskers" or stakes directly above the center-line of the utility.

j. Provide a table that indicates the utility reference number, description of the utility including size and material where ascertainable and depth to top of the utility.

**TOTAL**

Signature \_\_\_\_\_

Date \_\_\_\_\_

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Fax 925-686-5281

## Estimate

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Date of Estimate 3/16/2007

**ESTIMATE FOR:**

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Walnut Creek, CA 94596

925-906-1460 fax: 925-906-1465

William Conyers

P.O. #:

SURVEYOR	JOB DATE	DAY	TIME	Map Page & Cross	TERMS
RB					Net 30
DESCRIPTION	QTY	COST	TOTAL		

**ASSUMPTIONS:**

1. We assume access will be granted to all places requiring admission for the purpose of exposing and identifying the utilities.
2. Subtronic will be responsible for all traffic control, permit applications and site clean-up.
3. In the event a utility is mislocated and not found as marked, Subtronic will be compensated for the work performed in accordance with the rate schedule and the depth excavated.
4. We assume all potholes are in asphalted areas and can be cold-patched after backfill.

**PRESENTATION:** Utility descriptions will be presented in table form.

Mark areas in white for USA. Plan traffic control and obtain permits.	1	1,250.00	1,250.00
Each pothole up to five feet	16	345.00	5,520.00
Each 1/4 foot or part thereof between 5' & 7' depth	20	20.00	400.00
Each 1/4 foot or part thereof between 7' & 9' depth.	1	30.00	30.00
Each 1/4 foot or part thereof over 9'	1	50.00	50.00
Each 1/4 foot or part thereof beyond six inches depth of asphalt.	4	20.00	80.00
Use of water to penetrate clay and disposal of muddied backfill. Hourly (If required)	0	200.00	0.00
Transportation of material removed from potholes - hourly	4	180.00	720.00
Dumping of material removed from pothole. Per ton	4	45.00	180.00

**TOTAL**

Signature \_\_\_\_\_

Date \_\_\_\_\_

Page 3

# Subtronic Corporation

2430 Sprig Court, Ste C

Concord, CA 94520

Phone 925-686 3747

Fax 925-686-5281

## Estimate

Estimate # 7075

Date of Estimate 3/16/2007

P.O. #:

**ESTIMATE FOR:**

RBF Consulting

500 Ygnacio Valley Road, Ste. 270

Walnut Creek, CA 94596

925-906-1460 fax: 925-906-1465

William Conyers

SURVEYOR	JOB DATE	DAY	TIME	Map Page & Cross	TERMS	
RB					Net 30	
DESCRIPTION				QTY	COST	TOTAL
Backfill with Class 2 AB aggregate				16	40.00	640.00
Rental of electronic arrow board for traffic control as required by City. Arrow board will be required for initial potholing, backfilling and final patching. (weekly).				1	350.00	350.00

**UTILITY LOCATION**

**SCOPE OF SURVEY:** We will endeavor to locate underground utilities in the areas indicated, but for technical reasons cannot guarantee to do so, some short lengths of abandoned utilities may not be located.

**METHODOLOGY:** Location of utilities will be by electromagnetic field induction.

**INCLUSIONS:** Metallic utilities i.e. electric, telephone, gas and water. Non metallic utilities with tracer wire visible. Sewer and drain lines with minimum 4" cleanout or manhole access will be located by inserting a transmitter.

**TOTAL**

Signature

Date

Page 4

# Subtronic Corporation

2430 Sprig Court, Ste C

Concord, CA 94520

Phone 925-686 3747

Fax 925-686-5281

## Estimate

Estimate # 7075

Date of Estimate 3/16/2007

**ESTIMATE FOR:**

RBF Consulting

500 Ygnacio Valley Road, Ste. 270

Walnut Creek, CA 94596

925-906-1460 fax: 925-906-1465

William Conyers

P.O. #:

SURVEYOR	JOB DATE	DAY	TIME	Map Page & Cross	TERMS	
RB					Net 30	
DESCRIPTION				QTY	COST	TOTAL

**ASSUMPTIONS:**

1. We assume access will be granted to all places requiring admission for the purpose of tracking and identifying the utilities.

2. We assume that any existing utility drawings will be made available.

3. We assume Underground Service Alert will be notified prior to excavation.

4. We assume boring locations or areas of excavation will be marked on site prior to our arrival.

PRESENTATION: The utilities will be marked on the ground with spray paint.

Utility location, per day

2	1,088.00	2,176.00
---	----------	----------

If credit terms are extended to you for this project, payment must be received within 30 days of receipt of the invoice. Late fees will accrue at the rate of 1.5% per month until payment is received.

If our agreement includes a 'Paid When Paid' clause, we will be paid by the consultant after a reasonable period - 60 days after submittal of our invoices being the maximum - regardless of whether the consultant is paid by the client.

Interest rates of 1.5% per month will be applied to the outstanding balance after the 60 days.

This estimate is good for 60 days.

**TOTAL****Signature** \_\_\_\_\_**Date** \_\_\_\_\_

Page 5

This quotation is subject to our Specification and Standard Conditions of Contract.



# ***Subtronic Corporation***

2430 Sprig Court, Ste C

Concord, CA 94520

Phone 925-686 3747

Fax 925-686-5281

## ***Estimate***

Estimate # 7075

Date of Estimate 3/16/2007

**ESTIMATE FOR:**

RBF Consulting

500 Ygnacio Valley Road, Ste. 270

Walnut Creek, CA 94596

925-906-1460 fax: 925-906-1465

William Conyers

P.O. #:

SURVEYOR	JOB DATE	DAY	TIME	Map Page & Cross	TERMS
RB					Net 30
DESCRIPTION	QTY	COST	TOTAL		

DURATION: We estimate 5 days on site to complete this project. We can begin work within 7 days of receipt of your order.

**TOTAL \$11,396.00****Signature** \_\_\_\_\_**Date** \_\_\_\_\_

REFCONSUL

DATE (MM/DD/YY)  
11/21/06

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURER A:	Travelers Property Casualty Co of Am
INSURER B:	National Union Fire Ins Co of Pittsb
INSURER C:	Underwriters at Lloyd's London
INSURER D:	Hartford Fire Ins. Co.
INSURER E:	

COVERAGES		
<p>THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</p>		
POLICY EFFECTIVE	POLICY EXPIRATION	LIMITS

MAY PERTAIN, THE INSURANCE AFFORDED POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY	P630500D4092TIL06	11/30/06	11/30/07	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	\$1,000,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person)	\$5,000
	<input checked="" type="checkbox"/> CONTRACTUAL				PERSONAL & ADV INJURY	\$1,000,000
	<input checked="" type="checkbox"/> IBFPD, XCU				GENERAL AGGREGATE	\$2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	\$2,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC					
D	AUTOMOBILE LIABILITY	57UENTL0126	11/30/06	11/30/07	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	<input checked="" type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS				AUTO ONLY - EA ACCIDENT	\$
	<input checked="" type="checkbox"/> NON-OWNED AUTOS				OTHER THAN AUTO ONLY: EA ACC	\$
					AUTO ONLY: AGG	\$
					EACH OCCURRENCE	\$10,000,000
					AGGREGATE	\$10,000,000
						\$
B	EXCESS LIABILITY	BE6799628	11/30/06	11/30/07		\$
	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE					\$
	<input type="checkbox"/> DEDUCTIBLE					\$
	RETENTION \$					\$
						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					
C	OTHER Professional Liability	PI069400	11/30/06	11/30/07	IWC STATUS - BOTH- POLICY LIMITS	OTHER
	E.L. EACH ACCIDENT				\$	
	E.L. DISEASE - EA EMPLOYER				\$	
	E.L. DISEASE - POLICY LIMIT				\$	
					\$1,000,000 per claim \$2,000,000 annl aggr.	

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
General Liability policy excludes claims arising out of the performance of professional services  
Re: All Operations  
City of Milpitas, its officers, employees, agents, contractors,  
(See Attached Descriptions)

ADDITIONAL INSURED: INSURER LETTER:

CANCELLATION Ten Day Notice for Non-Payment of Premium

~~CANCELLATION BY POLICY HOLDER~~

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ~~PAY TO MAIL~~ TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~AND TO THE POLICYHOLDER~~ AND TO THE POLICYHOLDER.

AUTHORIZED REPRESENTATIVE

ACORD 25-S (7/97)1 of 2 #M178589

RLL © ACORD CORPORATION 1988

## DESCRIPTIONS (Continued from Page 1)

consultants, and volunteers are additional insured as respects to General and Auto Liability as required by written contract. Primary and Non Contributing coverage applies to GL as required by written contract.

POLICY NUMBER: P630500D4092TIL06

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES or  
CONTRACTORS (FORM B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

City of Milpitas  
Public Works Director/City Engineer  
455 East Calaveras Blvd  
Milpitas, CA 95035

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

Additional Insured Continued: its officers, employees, agents, contractors, consultants, and volunteers

PRIMARY INSURANCE:

IT IS UNDERSTOOD AND AGREED THAT THIS INSURANCE IS PRIMARY  
AND ANY OTHER INSURANCE MAINTAINED BY THE ADDITIONAL INSURED  
SHALL BE EXCESS ONLY AND NOT CONTRIBUTING WITH THIS  
INSURANCE.

ACORD CERTIFICATE OF LIABILITY INSURANCE		OP ID RC RBFCO-1	DATE (MM/DD/YYYY) 09/28/06												
<b>PRODUCER</b> United Captive Ins. Brokers 17151 Newhope St., Ste 211 Fountain Valley CA 92708 Phone: 714-708-4370 Fax: 714-708-2300		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.													
<b>INSURED</b>  RBF Consulting, Inc. 14725 Alton Parkway Irvine CA 92718		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURERS AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A: U.S. Fidelity and Guaranty Co.</td> <td>25887</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>		INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: U.S. Fidelity and Guaranty Co.	25887	INSURER B:		INSURER C:		INSURER D:		INSURER E:	
INSURERS AFFORDING COVERAGE	NAIC #														
INSURER A: U.S. Fidelity and Guaranty Co.	25887														
INSURER B:															
INSURER C:															
INSURER D:															
INSURER E:															

### COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY				EACH OCCURRENCE \$
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				MED EXP (Any one person) \$
					PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC				PRODUCTS - COMP/OP AGG \$
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS				
	<input type="checkbox"/> NON-OWNED AUTOS				
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
					AGG AGG \$
	EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$
					\$
					\$
	DEDUCTIBLE				\$
	RETENTION \$				\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	D123W00125	07/01/06	07/01/07	<input checked="" type="checkbox"/> NO STAT- TORY LIMITS <input type="checkbox"/> OTHER
	E.L. EACH ACCIDENT \$ 1,000,000				
	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000				
	E.L. DISEASE - POLICY LIMIT \$ 1,000,000				
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				
	If yes, describe under SPECIAL PROVISIONS below				
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

\*10 days notice of cancellation for non-payment of premium. [X]

Re: All Operations

### CERTIFICATE HOLDER

CITYMIL

City of Milpitas  
Public Works Director/  
City Engineer  
455 East Calaveras Blvd.  
Milpitas CA 95035

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ~~SEND BY MAIL~~ \*30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT ~~ALL DATA HEREIN~~ ALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Mark Barrie

*Mark Barrie*